

Summary of Education Bills Passed in the 1st Called Session
Texas Institute for Education Reform
June 2011

The legislature passed 4 bills affecting public education in the Special Session ending June 29, 2011. The bills were the fiscal matters bill (SB 1), the supplemental appropriations bill (SB 2), the instructional materials bill (SB 6), and the mandate relief bill for school districts (SB 8). Below are the major provisions of each bill along with a summary of the actions that TIER and TCCW took to advance our legislative agenda.

SB 1 (Duncan, Shapiro, Pitts): relating to certain state fiscal matters, providing penalties.

This bill, known as the “fiscal matters bill” was a key part of the budget process. While the general appropriations bill (HB 1 from the regular session) set the state’s budget, SB 1 was necessary to provide the cost savings that allowed the budget to balance. The fiscal matters bill did not pass during the regular session and that was one of the main reasons that Governor Perry called the legislature into special session. The 263-page bill touches almost every area of state government and spending. Several sections relate to public education and those provisions are listed below:

- Under current law, the state is required to pay school districts 15% of their annual budget entitlement by August 25th. This bill allows the state to delay that payment until September 10th. This allows the state to balance the budget by moving a share of public school funding into the next budget cycle.
- Under current law, the Commissioner of Education may pay for students to take the SAT and International Baccalaureate exams if the students were enrolled in high school advanced placement courses. This bill would also require students to demonstrate financial need.
- Under current law, school district employees who return to school to pursue a teaching certificate are eligible for tuition exemptions from the state. SB 1 would also require that they pursue a certificate in a subject area that is experiencing a critical shortage of qualified teachers to earn the tuition exemption.
- The bill requires the commissioner of education, if a school district adopts a maintenance and operations (M&O) tax rate that is below the rate equal to the product of the state compression percentage multiplied by the M&O tax rate adopted by the district for the 2005 tax year, to reduce the district's entitlement to additional state aid to offset the loss of local revenue resulting from previously enacted tax rate reduction in proportion to the amount by which the adopted rate is less than the rate equal to the product of the state compression percentage multiplied by the rate adopted by the district for the 2005 tax year. The bill makes this reduction applicable beginning with the M&O tax rate adopted for the 2009 tax year.
- SB 1 replaces the formula for determining the minimum salary schedule for certain professional staff with a fixed minimum monthly salary for such staff based on an employee's years of experience. The bill adds a temporary provision, set to expire September 1, 2013, requiring the Commissioner of Education to review the minimum

salary schedule and submit to the legislature a written report that recommends the method to be used to determine the schedule.

- To determine how the state will spread the education spending cuts among school districts, the bill adopts a “regular program adjustment factor”. Most school districts and charter schools will see a reduction of 7-8% in 2011-12 and a smaller reduction in 2012-13.
- The bill requires the Speaker of the House and the Lieutenant Governor to establish a joint legislative interim committee to study public school funding and make recommendations to the next legislature.
- This bill would allow bonds used to fund charter schools to be guaranteed by the state’s permanent school fund. To qualify, the charter holder must apply for the designation of a “charter district” with the Commissioner of Education and meet the financial standards adopted by the Commissioner. The standards must require the charter school to be rated as investment-grade, without the guarantee, by a nationally-recognized investment rating firm and the bonds must be issued under the Higher Education Facility Authority for Public Schools Act (*V.T.C.A., Education Code, Chapter 53*). Bond guarantee capacity for charter district bonds is limited to the total available capacity of the guaranteed bond program times the percentage of charter students in the state. In other words, if charter school students comprise 10% of the state’s primary and secondary school students, then up to 10% of the capacity of the bond program could be used to guarantee charter district bonds. The Commissioner may not approve bonds that exceed this cap or that will result in lower bond ratings for school district bonds. The Commissioner may request that the Comptroller place the portion of the permanent school fund committed to the guarantee of charter district bonds in a segregated account if he or she determines that it is needed to avoid any negative impact on the bond ratings of school district bonds. The bill also creates the Charter District Bond Guarantee Reserve Fund. Charter districts that use the bond guarantee will be required to remit annually 10% of the savings that the districts realized through the lower interest rates provided by the bond guarantee. Each year, the Commissioner must review the condition of the bond guarantee program and determine whether the percentage that must be deposited by each charter district should be raised. If a charter district defaults on a bond, the amount due on the bond will be paid by the Charter District Bond Guarantee Reserve Fund. If there is not enough in that fund to cover the amount due, the remainder will be borrowed from the permanent school fund and be repaid, with interest, as soon as funds are available in the reserve fund. If the Commissioner determines that a charter district is acting in bad faith, he or she may request that the Attorney General take appropriate legal action.
- SB 1 makes some changes to the state’s virtual school network. Under current law, a high school student must be no older than 21 years of age to take virtual courses from the state. This bill raises the eligibility age to 26. Second, it requires school districts to adopt a policy that allows students to enroll in virtual courses. Third, it requires entities that administer virtual courses to allow students to submit comments on the quality of the course for review by the public. Next, it provides a mechanism for the courses to be updated to reflect any changes in the TEKS. Finally, it allows districts and schools to charge a fee for a virtual course—not to exceed the actual cost to the district.

Since this bill covered many topics, the majority of TIER's and the TCCW's work was to encourage legislators to amend this bill to address some of our issues and prevent damaging amendments. To that end, we supported amendments to help dropout recovery charter schools, allow charter schools to access the permanent school fund bond guarantee, expand the virtual school network, and require prekindergarten programs to have a school-readiness component. Of these, the charter school bond guarantee and virtual school network provisions remained in the bill and were approved by the conference committee. We also educated legislators about the need to defeat an amendment in conference committee that would have allowed school districts to enact a two-year moratorium on state testing and use any savings to pay teacher salaries.

SB 2 (Ogden, Pitts): Appropriating money for the support of state government for the period beginning September 1, 2011, and ending August 31, 2013; and authorizing and prescribing conditions, limitations, rules, and procedures for allocating and expending the appropriated funds.

SB 2 was the supplemental appropriations bill that made certain budget contingency adjustments to ensure the budget was accurate. Like SB 1 above, this bill touched many areas of state government. The provisions affecting public education are as follows:

- The bill appropriates \$19.3 billion per year for funding the state's public education system.
- The bill sets aside \$550,000 for the Texas Education Agency to administer the charter school bond guarantee program that was included in SB 1.

Two education funding amendments were added in the House but removed in conference committee. The first, by Rep. Shelton, would have allowed the Texas Education Agency to use any surplus funds—up to \$250 million—for discretionary grant programs such as teacher incentive pay grants, advanced placement, virtual learning, dropout prevention, early childhood readiness, instructional materials, the Texas High School Project, Early College High School initiatives, and STEM programs. While it is unlikely that the agency would have had additional funds to redirect to these programs, TIER and the TCCW supported this amendment because these valuable programs sustained significant cuts in the original budget.

The second amendment, by Rep. Donna Howard, dealt with the use of the state's economic stabilization ("Rainy Day") fund. If the fund outperformed expectations over the next two years, her amendment would require the state to send up to \$2 billion of the surplus to school districts to help offset costs linked to enrollment growth. This amendment was removed based on concerns that the legislature would likely need that money for other expenses in 2013—such as health and human services—and that this legislature should not bind the next legislature to spending decisions.

SB 6 (Shapiro, Eissler): relating to the foundation curriculum, the establishment of the instructional materials allotment, and the adoption, review, and purchase of instructional materials and technological equipment for public schools; providing penalties.

This bill gives school districts the flexibility to purchase materials and technology to deliver the curriculum to prepare students for the new assessment system. Under current law, districts lack the flexibility to purchase additional materials or technological equipment to deliver instructional materials. Additionally, since the state provides instructional materials directly to school districts, there is little incentive for the publishers of instructional materials or school districts to consider cost. The provisions are as follows:

- S.B. 6 replaces the state textbook fund with the state instructional materials fund. It requires the State Board of Education (SBOE) each year to set aside an amount equal to 50 percent of the annual distribution for that year from the permanent school fund to the available school fund to be placed in the state instructional materials fund. The bill requires money in the state instructional materials fund to be used to fund the instructional materials allotment, to purchase special instructional materials for the education of blind and visually impaired students in public schools, to pay the expenses associated with the instructional materials adoption and review process, to pay the expenses associated with the purchase or licensing of open-source instructional material, and to pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and shipping.
- The bill entitles a school district to an annual allotment from the state instructional materials fund for each student enrolled in the district. It requires the commissioner to determine the amount of the allotment per student each year on the basis of the amount of money available in the state instructional materials fund and requires the allotment to be transferred to the credit of the district's instructional materials account. Districts will use this allotment to purchase instructional materials and technological equipment and to pay for teacher training in the appropriate use of the materials and equipment. Districts must first use the allotment to purchase instructional materials that will assist the district in satisfying performance standards under HB 3 (2009) on criterion-referenced essential knowledge and skills and end-of-course assessment instruments adopted by the Texas Education Agency (TEA).
- The Commissioner of Education will maintain an instructional materials account for each school district and, each year, to deposit in the account for each district the amount of the district's instructional materials allotment. Upon request of the district, the commissioner will pay the cost of instructional materials requisitioned by a school district using funds from the district's account. The bill requires the commissioner to adopt rules regarding the documentation a school district must submit to receive such funds. Money deposited in a district's instructional materials account remains in the account until used by the district and any unused money is carried forward.
- School districts and open-enrollment charter school must annually certify to the SBOE and the commissioner that the district provides each student with instructional materials for each subject in the required curriculum under state law and each grade level that cover all elements of the essential knowledge and skills adopted by the SBOE for that subject and grade level applies to subjects other than physical education. The bill entitles an open-enrollment charter school to the instructional materials allotment and subjects charter schools to the same statutory provisions relating to instructional materials as if the school were a school district. The bill authorizes the SBOE, if the commissioner places

material on the commissioner's adopted list of electronic instructional material and material that conveys certain information to the student and not later than the 90th day after the material is placed on the list, to require the commissioner to remove the material from the list. The bill removes a provision of law requiring the removal of an electronic textbook or instructional material from the commissioner's adopted list to be recommended by a panel of recognized experts in the subject area of the electronic textbook or instructional material and experts in education technology. The bill adds to the conditions that must be met for the SBOE to place open-source instructional material for a secondary-level course submitted for adoption by an eligible institution on the SBOE's instructional material list the condition that SBOE review and comment on the instructional material by not later than the 90th day after the date the material is submitted and before placement of the material on the list.

- SB 6 combines the conforming and nonconforming lists of instructional materials required to be adopted by the SBOE into a single list that includes each instructional material submitted for each subject and grade level. The material must meet applicable physical specifications adopted by the SBOE and cover at least half of the elements of the TEKS of the subject and grade level.
- The bill clarifies that the SBOE, in adopting a review and adoption cycle for instructional materials, is not required to review and adopt instructional materials for all grade levels in a single year but is required to give priority to instructional materials in the following subjects: foundation curriculum subjects for which the TEKS have been substantially revised and for which statewide standardized tests are required; foundation curriculum subjects for which the TEKS have been substantially revised; foundation curriculum subjects not otherwise described; and enrichment curriculum subjects. The bill changes the maximum portion of the instructional materials for subjects in the foundation curriculum under review by the SBOE from one-sixth of the instructional materials each year to one-fourth of the instructional materials each biennium. The bill lengthens from at least every six years to every eight years the frequency by which SBOE rules must provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum and makes a conforming change.
- S.B. 6 removes economics with emphasis on the free enterprise system and its benefits as a subject under the enrichment curriculum and includes it as a component of social studies under the foundation curriculum.
- The bill allows the Commissioner to set up a program under which districts and charter schools may apply for grants to implement a technology lending program. Under such a program, technological equipment—such as computers, e-readers, or other electronic devices—would be purchased by the district or charter school and loaned to students who do not have access to the equipment.

TIER and TCCW supported this legislation. However, when SB 6 was debated on the House floor, Rep. Eissler added an amendment to include the provisions of HB 500 from the regular session. This amendment would have reduced graduation standards in the state by allowing students to graduate even if they failed as many of 8 of the 12 end of course exams. The amendment also removed the current requirement that the exams count 15% of a student's grade. Finally, it would have set up a pilot program to allow up to 20 districts to reduce the number of

state-mandated tests in grades 3 through 8. We strongly opposed this amendment as it would have gutted the state's new accountability and testing system.

Because of Rep. Eissler's repeated attempts to pass HB 500 or attach it as an amendment to another bill, we were prepared for this contingency. As soon as the amendment was adopted, we worked closely with the Senate sponsor, Senator Shapiro, Lt. Governor Dewhurst, and Governor Perry to defeat the amendment and it was removed in the conference committee.

SB 8 (Shapiro, Eissler): relating to the flexibility of the board of trustees of a school district in the management and operation of public schools in the district.

This is the mandate relief bill that contains the provisions of HB 400, SB 12, and other bills from the regular session. Its purpose is to provide flexibility to school districts in the management of personnel and administrative matters so that districts can better operate with reduced state funding. The provisions are as follows:

- It clarifies the situations under which a school district employee may be terminated or suspended. Under current law, an employee may face these consequences if they do not hold or take necessary actions to timely renew a required certificate or permit. Under SB 8, an employee may be terminated or suspended if they do not hold a *valid* credential or do not comply with required criminal background checks. Additionally, SB 8 requires school district administrators to take appropriate action against an employee if they have knowledge of such violations. The bill does provide that employees may not be terminated or suspended for an expired credential if the employee requested a renewal within 10 days of the date the credential expired.
- It requires new teachers to spend 15 clock hours of field-based experience before a district may hire them as classroom teachers. The field experience can be in any public or private school approved by the Commissioner of Education.
- Under current law, a school district must give notice of nonrenewal or a teacher's contract at least 45 days before the end of the school year. In order to give school districts more time to determine their financial situation, SB 8 allows them to wait until 10 days before the end of the school year to give notice or nonrenewal. The bill also requires the notice to be hand-delivered or, if the teacher is unavailable for such delivery, sent by certified or express mail to the teacher's address of record.
- Under current law, a school district may suspend a teacher for good cause without pay in lieu of discharge. SB 8 allows a district to suspend a teacher in lieu of pending discharge as well. The suspension may be for any period not to exceed the end of the school year.
- Under current law, when a school district undertakes a necessary reduction in force, teachers are required to be terminated in reverse order of seniority. SB 8 removes this requirement and instead requires school districts to base terminations on the results of teacher appraisals. The appraisals must include teachers' implementation of discipline management procedures and student performance.
- SB 8 authorizes the board of trustees of a school district with an enrollment of at least 5,000 students to designate an attorney licensed to practice law in Texas to hold a hearing on a proposed nonrenewal of a teacher's term contract on the board's behalf, to create a hearing record for the board's consideration and action, and to recommend an action to

the board. The bill prohibits the attorney serving as the board's designee from being employed by a school district and prohibits either the designee or a law firm with which the designee is associated from serving as an agent or representative of a school district, of a teacher in a dispute between a district and a teacher, or of an organization of school employees, school administrators, or school boards of trustees. The bill requires the board's designee to provide to the board, not later than the 15th day after the completion of a hearing, a record of the hearing and the designee's recommendation whether the contract should be renewed or not renewed.

- The bill requires the board to consider the record of the hearing and the designee's recommendation at the first board meeting for which notice can be posted in compliance with state open meetings law following the receipt of the record and recommendation, unless the parties agree in writing to a different date. The bill requires the board to consider the hearing record and the designee's recommendation and allow each party to present an oral argument to the board at the meeting. The bill authorizes the board to limit the amount of time for oral argument by written policy that provides equal time for each party. The bill authorizes the board to obtain advice concerning legal matters from an attorney who has not been involved in the proceedings. The bill authorizes the board to accept, reject, or modify the designee's recommendation and requires the board to notify the teacher in writing of the board's decision not later than the 15th day after the date of the meeting. The bill makes a conforming change.
- It exempts a decision to terminate a probationary or term contract before the end of the contract period or to terminate a continuing contract at any time, on the basis of a declared financial exigency that requires a reduction in personnel, from statutory provisions governing a hearing before a hearing examiner unless the board of trustees has decided to use the process prescribed for such a hearing for that purpose.
- SB 8 replaces the formula for determining the minimum salary schedule for certain professional staff with a fixed minimum monthly salary for such staff based on an employee's years of experience. The bill adds a temporary provision, set to expire September 1, 2013, requiring the Commissioner of Education to review the minimum salary schedule and submit to the legislature a written report that recommends the method to be used to determine the schedule. This report is due January 1, 2013. It also repeals Section 21.402(b), (c), (c-1), (c-2), (c-3), (d), and (e), Education Code, relating to the minimum salary schedule for certain professional staff.
- It authorizes a school district board of trustees, in accordance with district policy, to implement a furlough program and reduce the number of days of service otherwise required by law by not more than six days of service during a school year if the commissioner certifies that the district will be provided with less state and local funding for that year than was provided to the district for the 2010-2011 school year. The bill authorizes the board of trustees to reduce the salary of a furloughed employee in proportion to the number of days by which service is reduced.
- If a school district implements a widespread salary reduction for teachers, the district must also reduce the salary of all administrators by a similar percentage.
- The bill removes the requirement that students take an annual physical fitness evaluation in grades 3-12. Such evaluations are only required if the student is enrolled in a physical education course.

- SB 8 requires the commissioner, by July 1 of each year, to determine for each school district whether the estimated amount of state and local funding per student is less than the amount provided to the district for the 2010-2011 school year. The bill requires the commissioner to certify the percentage decrease in funding to be provided to the district if the amount estimated to be provided is less than the district's funding for the 2010-2011 school year. The bill requires the commissioner to make adjustments as necessary to reflect changes in a school district's maintenance and operations tax rate; to base the determinations regarding the funding levels for a district required to take action to reduce its wealth per student to the equalized wealth level on the district's net funding levels after deducting any amounts required to be expended by the district to reduce its wealth per student to the equalized wealth level; and to determine a district's weighted average daily attendance in accordance with the Foundation School Program provisions as they existed on January 1, 2011.
- SB 8 authorizes a school district board of trustees to adopt a resolution declaring a financial exigency for the district. The bill provides that such a declaration expires at the end of the fiscal year during which the declaration is made unless the board adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year. The bill specifies that the board is not limited in the number of times the board may adopt a resolution declaring continuation of the financial exigency. The bill authorizes the board to terminate a financial exigency declaration at any time if the board considers it appropriate. The bill requires the board to notify the commissioner each time the board adopts a resolution and requires the commissioner by rule to prescribe the time and manner in which notice must be given to the commissioner.
- The bill establishes that a school district is not required to produce public information for inspection or duplication or to produce copies of public information in response to a request unless the requestor has paid the charge from the district for costs related to producing public information in response to a previous request from that requestor.

TIER and the TCCW strongly supported several provisions of SB 8. The most important changes made by SB 8 include using teacher appraisals rather than seniority as the basis for teacher terminations; moving away from the state teacher salary schedule and allowing the Commissioner or Education to make recommendations concerning compensation strategies; and the streamlining of the appeals process for teachers who are terminated. Our coalition worked to support these provisions by providing testimony during the committee process, supporting floor amendments containing positive changes, working with legislators to encourage them to support the bill, and working with the conference committee to retain the changes that we sought.

While SB 8 is a big step forward for reform, we were unable to realize some needed improvements in the areas of class-size flexibility and the use of teacher and principal evaluations for continued employment and advancement. We will work with the Commissioner and the Texas Education Agency in these areas to (1) promote the approval of more class-size limit waivers to demonstrate that "one size fits all" is not the best approach to driving student achievement, and (2) encourage the Commissioner to adopt, by rule, provisions that were included in the regular session's SB 4 pertaining to a professional development and appraisal system for educators and administrators.